

In the Matter of Kindred Brunson, DOP Docket No. 2004-747

Kindred Brunson, a County Correction Officer with Union County, represented by Michael K. Sharp, Executive Vice President, PBA Local 105, requests an Intergovernmental Transfer to the title of Senior Correction Officer with the Department of Corrections.

By way of background, the appellant was permanently appointed to the title of County Correction Officer, effective July 22, 1995. On September 17, 2000, he was immediately suspended, pending a departmental hearing, on charges of conduct unbecoming a public employee, inability to perform duties, and violation of the appointing authority's rules regarding the use of indecent or abusive language. Specifically, the appointing authority asserted that, on September 13, 2000, the appellant verbally abused several inmates. Following a departmental hearing, the disciplinary charges against the appellant were dismissed via Final Notice of Disciplinary Action dated April 6, 2001. Department of Personnel (DOP) records also reflect that, while the appellant was immediately suspended, he was laid off for reasons of economy or efficiency, effective April 1, 2001, and his name was placed on a special reemployment list for the title of County Correction Officer with Union County. The appellant was permanently appointed from the special reemployment list for that title on July 18, 2001. The appellant is still currently serving in the title of County Correction Officer with Union County.

The record also reflects that, in conjunction with the April 1, 2001 layoff of 107 County Correction Officers in Union County, the Office of Intergovernmental Services assisted several of the employees in obtaining Intergovernmental Transfers to other State and County correctional facilities. Specifically, 58 employees received Intergovernmental Transfers to the title of Senior Correction Officer with the New Jersey Department of Corrections, eight moved into the title of Correction Officer Recruit with the New Jersey Department of Corrections, and 11 employees transferred to the title of County Correction Officer in other New Jersey counties. *See In the Matter of Richard Andrews, et al.* (Commissioner of Personnel, decided May 15, 2001) and *In the Matter of Giovanni Abad, et al.* (Commissioner of Personnel, decided June 14, 2001) (Commissioner of Personnel approved the Intergovernmental Transfer of 77 County Correction Officers from Union County in accordance with the terms of the Addendum to the Intergovernmental Transfer Agreement). It is noted that the Intergovernmental Transfer Pilot Program was established, effective September 1, 1999, and expired on August 31, 2000. This program was established to permit the transfer of State, county and municipal employees between jurisdictions without loss of permanent status, subject to the approval of the transferring agency, the receiving agency, the transferring

employee and the DOP. *N.J.A.C.* 4A:4-7.1A, the rule governing the Intergovernmental Transfer Program, became effective on November 19, 2001. In the intervening time period, *i.e.*, from September 1, 2000 through November 18, 2001, requests for Intergovernmental Transfers were reviewed on a case-by-case basis, subject to the approval of the DOP and the utilization of rule relaxation procedures.

In the instant request, the appellant contends that, had he not been immediately suspended from his position from September 2000 through the date of his layoff, he “would have been entitled to a transfer to the New Jersey Department of Corrections.” He contends that his suspension precluded him from participating in a job fair held in February 2001 to assist the County Correction Officers affected by the layoff in finding alternate employment opportunities through the Intergovernmental Transfer Program.

In response, the Department of Corrections (DOC) confirms that it consented to the Intergovernmental Transfer of 66 of the 107 County Correction Officers who were laid off from their positions with Union County on April 1, 2001. However, the DOC notes that the Intergovernmental Transfer Program is voluntary in nature and requires the consent of the sending agency, the receiving agency, the employee and the DOP. The DOC notes that it did not offer positions to all affected employees, and it should not be, in effect, forced to offer a position to the appellant.

CONCLUSION

N.J.A.C. 4A:4-7.1A(a) provides that an intergovernmental transfer is the movement of a permanent employee between governmental jurisdictions operating under Title 11A, New Jersey Statutes, or the appointment of an employee, by a governmental jurisdiction operating under Title 11A, within 90 days of the effective date of a layoff for reasons of economy or efficiency in which the employee is separated from service from another governmental jurisdiction operating under Title 11A. *N.J.A.C.* 4A:4-7.1A(b) provides that an intergovernmental transfer *shall require* the consent in writing of the sending jurisdiction, if any, the receiving jurisdiction and the affected employee, and the approval of the Department of Personnel.

It is noted that, on the effective date of the appellant’s layoff, April 1, 2001, the above cited provisions had not yet been adopted by the Merit System Board. However, while the above regulatory provisions were not yet in effect, the procedures governing the Intergovernmental Transfer Program at that time were essentially the same. Specifically, at the time of the appellant’s layoff, upon the approval of the sending agency, the receiving agency, the employee and the DOP, requests for Intergovernmental Transfers

were presented to the Commissioner of Personnel for relaxation of the applicable rules. In fact, since the inception of the Intergovernmental Transfer Pilot Program in September 1999, and continuing through the present, an Intergovernmental Transfer of an employee required the consent and approval of all affected parties. In other words, participation in the Intergovernmental Transfer program is not and was at no time an entitlement. Rather, participation is at the discretion of the parties involved in the transfer, namely, the sending agency, the receiving agency, the employee and the DOP. In the matter at hand, the DOC had made clear that it would not consent to the Intergovernmental transfer of the appellant to the DOC. Moreover, the appellant has not alleged that the DOC's refusal to offer him a position via the Intergovernmental Transfer Program constituted an abuse of the discretion afforded to the receiving agency. Accordingly, the appellant has not established that he is entitled to an Intergovernmental Transfer to the DOC.

ORDER

Therefore, it is ordered that this request be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
MERIT SYSTEM BOARD ON
THE 12TH DAY OF JANUARY, 2005

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Acting Commissioner
Department of Personnel

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